

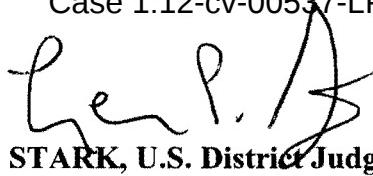
**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DELRON TRIPPLETT,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civ. No. 12-537-LPS
	:	
MR. AMAR, et al.,	:	
	:	
Defendants.	:	

Delron Triplett, Howard R. Young Correctional Institution, Wilmington, Delaware, Pro Se Plaintiff.

MEMORANDUM OPINION

July 29, 2013
Wilmington, Delaware



Lee P. Stark
STARK, U.S. District Judge:

I. INTRODUCTION

Plaintiff Delron Triplett (“Plaintiff”), filed this action pursuant to 42 U.S.C. § 1983 alleging violations of his constitutional rights.¹ Plaintiff, an inmate, is housed at the Howard R. Young Correctional Institution in Wilmington, Delaware. Plaintiff appears *pro se* and has been granted leave to proceed *in forma pauperis*. (D.I. 4)

II. BACKGROUND

On March 23, 2012, Plaintiff slipped and fell as he was exiting the court and transit van and injured his back. Plaintiff was handcuffed and shackled. He alleges that Defendants Correctional Officers Amar (“Amar”) and Ince (“Ince”) did not assist him. Plaintiff names Warden Phil Morgan (“Morgan”) as a defendant because he “oversees all officers to make sure they are doing their job and his two officers were not.” (D.I. 2) Plaintiff seeks compensatory damages.

III. LEGAL STANDARDS

This Court must dismiss, at the earliest practicable time, certain *in forma pauperis* actions that are frivolous, malicious, fail to state a claim, or seek monetary relief from a defendant who is immune from such relief. *See 28 U.S.C. § 1915(e)(2) (in forma pauperis actions).* The Court must accept all factual allegations in a complaint as true and take them in the light most favorable to a *pro se* plaintiff. *See Erickson v. Pardus*, 551 U.S. 89, 93 (2007); *Phillips v. County of Allegheny*, 515 F.3d 224, 229 (3d Cir. 2008). Because Plaintiff proceeds *pro se*, his

¹Pursuant to 42 U.S.C. § 1983, a plaintiff must allege that some person has deprived him of a federal right, and that the person who caused the deprivation acted under color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

pleading is liberally construed and his Complaint, “however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” *Erickson*, 551 U.S. at 94 (internal quotation marks omitted).

An action is frivolous if it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Under 28 U.S.C. § 1915(e)(2)(B)(i), a court may dismiss a complaint as frivolous if it is “based on an indisputably meritless legal theory” or a “clearly baseless” or “fantastic or delusional” factual scenario. *Neitzke*, 490 at 327-28; *see also Wilson v. Rackmill*, 878 F.2d 772, 774 (3d Cir. 1989); *Deutsch v. United States*, 67 F.3d 1080, 1091-92 (3d Cir. 1995) (holding frivolous a suit alleging that prison officials took inmate’s pen and refused to give it back).

The legal standard for dismissing a complaint for failure to state a claim pursuant to § 1915(e)(2)(B)(ii) is identical to the legal standard used when ruling on Rule 12(b)(6) motions. *See Tourscher v. McCullough*, 184 F.3d 236, 240 (3d Cir. 1999). However, before dismissing a complaint or claims for failure to state a claim upon which relief may be granted pursuant to the screening provisions of 28 U.S.C. § 1915, the Court must grant Plaintiff leave to amend his complaint, unless amendment would be inequitable or futile. *See Grayson v. Mayview State Hosp.*, 293 F.3d 103, 114 (3d Cir. 2002).

A well-pleaded complaint must contain more than mere labels and conclusions. *See Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). When determining whether dismissal is appropriate, the Court conducts a two-part analysis. *See Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009). First, the factual and legal elements of a claim are separated. *See id.* The Court must accept all of the complaint’s well-

pledged facts as true, but may disregard any legal conclusions. *See id.* at 210-11. The assumption of truth is inapplicable to legal conclusions or to “[t]hreadbare recitals of the elements of a cause of action supported by mere conclusory statements.” *Iqbal*, 556 U.S. at 678. Second, the Court must determine whether the facts alleged in the complaint are sufficient to show that the plaintiff has a “plausible claim for relief.” *Fowler*, 578 F.3d at 211. In other words, the complaint must do more than allege the plaintiff’s entitlement to relief; rather, it must “show” such an entitlement with its facts. *Id.* A claim is facially plausible when its factual content allows the Court to draw a reasonable inference that the defendant is liable for the misconduct alleged. *See Iqbal*, 556 U.S. at 678. The plausibility standard “asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of ‘entitlement to relief.’” *Id.* (quoting *Twombly*, 550 U.S. at 570).

IV. DISCUSSION

A. Slip and Fall

Plaintiff alleges that Amar and Ince failed to assist him when he exited a van and, as a result, he slipped, fell, and was injured. Plaintiff raises a negligence claim.

The Supreme Court has held that prison authorities’ mere negligence in and of itself does not violate prisoners’ constitutional rights. *See Daniels v. Williams*, 474 U.S. 327, 330-30 (1986). Indeed, claims of negligence, without a more culpable state of mind, do not constitute “deliberate indifference.” *See Singletary v. Pennsylvania Dep’t of Corr.*, 266 F.3d 186, 193 n.2 (3d Cir. 2001); *Bacon v. Carroll*, 232 F. App’x 158, 160 (3d Cir. Apr. 30, 2007) (slip and fall claim amounts merely to negligence); *Denz v. Clearfield Cnty.*, 712 F. Supp. 65, 66 (W.D. Pa.

1989) (no Eighth Amendment violation based on slippery floor in prison cell, despite prison official's alleged knowledge of the hazard).

Plaintiff's allegations that Amar and Ince did not assist him do not reflect the deliberate indifference required to impose liability under the Eighth Amendment. The claim is nothing more than negligence. For the above reasons, the Court will dismiss the claim as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1).

B. Respondeat Superior

Morgan is named as a defendant based upon his supervisory position. Supervisory liability cannot be imposed under § 1983 on a respondeat superior theory.² See *Iqbal*, 556 U.S. 662; *Monell v. Department of Social Services*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423 U.S. 362 (1976). “A[n individual government] defendant in a civil rights action must have personal involvement in the alleged wrongdoing; liability cannot be predicated solely on the operation of respondeat superior.” *Evancho v. Fisher*, 423 F.3d 347, 353 (3d Cir. 2005) (quoting *Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988)). Purpose rather than knowledge is required to impose liability on an official charged with violations arising from his or her superintendent responsibilities.³ See *Iqbal*, 556 U.S. at 677. “Absent vicarious liability, each Government

²In *Iqbal*, the plaintiff alleged supervisory officials violated his rights because one official was the “principal architect” of the policy, and another was “implemental” in adoption and execution of the policy. See 556 U.S. at 669. The Supreme Court found the allegations facially insufficient. See *id.* at 676 (quoting *Robertson v. Sichel*, 127 U.S. 507, 515-516 (1888), for proposition that “[a] public officer or agent is not responsible for the misfeasances or position wrongs, or for the nonfeasances, or negligences, or omissions of duty, of the subagents or servants or other persons properly employed by or under him, in the discharge of his official duties”).

³In light of *Iqbal*, it is uncertain whether proof of personal knowledge, with nothing more, provides a sufficient basis to impose liability upon a supervisory official. See *Bayer v. Monroe*

official, his or her title notwithstanding, is only liable for his or her own misconduct.” *Id.*

Facts showing personal involvement of the defendant must be asserted; such assertions may be made through allegations of specific facts showing that a defendant expressly directed the deprivation of a plaintiff’s constitutional rights or created such policies by which the subordinates had no discretion but to apply the policies in a fashion which actually produced the alleged deprivation; *e.g.*, supervisory liability may attach if the plaintiff asserts facts showing that the supervisor’s actions were “the moving force” behind the harm suffered by the plaintiff. *See Sample v. Diecks*, 885 F.2d 1099, 1117-118 (3d Cir. 1989); *see also Iqbal*, 556 U.S. at 677-87; *City of Canton v. Harris*, 489 U.S. 378 (1989); *Heggenmiller v. Edna Mahan Corr. Inst. for Women*, 128 F. App’x 240 (3d Cir. Apr. 11, 2005) (not published).

Plaintiff alleges that Morgan failed to oversee his officers “to make sure they are doing their job.” There are no allegations that Morgan violated Plaintiff’s constitutional rights, that he expressly directed the deprivation of Plaintiffs’ constitutional rights, or that he created policies wherein subordinates had no discretion but to apply them in a fashion which actually produced the alleged deprivation.

The claim against Morgan is frivolous. Accordingly, the Court will dismiss the claim pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1).

Cnty. Children and Youth Services, 577 F.3d 186, 190 n.5 (3d Cir. 2009)

V. **CONCLUSION**

For the above reasons, the Court will dismiss the Complaint as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1). Amendment is futile.

An appropriate Order follows.